United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

UNITED STATES COURT OF APPEALS

For The District Of Columbia Circuit

No. 18,949

EARL GLOVER, Appellant

v

UNITED STATES OF AMERICA, Appellee

9730

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLANT

T. EMMETT McKENZIE
THE CENTURY BUILDING
412 FIFTH STREET, N. W.
WASHINGTON, D. C., 20001

COUNSEL FOR APPELLANT.

STATEMENT OF QUESTIONS PRESENTED

Where the only eye witness to an alleged homicide states that he recalls that the alleged homicide occurred on a specific date and bases his recollection of said date upon the alleged fact that on said date he went with the defendant and bought an automobile; and defendant attempts to introduce documentary evidence proving the automobile was purchased on a prior date, and the defendant attempted to cross examine the said witness fully respecting the alleged purchase of the said automobile - was it error for the trial court to deny the right to so cross examine and to introduce such documentary evidence for the reason that the said witness did not establish, until cross examination, that his memory of the date was predicated upon the purchase of the said automobile?

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TEXT BOOKS

UNITED STATES COURT OF APPEALS
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No. 18,949

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Appeal from the United States District Court
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JURISDICTIONAL STATEMENT

The Jurisdiction of this Court is invoked under the terms of Title 29, §1291, U.S.C.

STATEMENT OF THE CASE

Below, appellant was accused of having committed murder in the first degree.

After a trial by jury he was convicted of murder in the second degree, and received a sentence of from 15 years to life.

The factual background is substantially as follows:

The appellant was the operator of an unlicensed drinking establishment operating after licensed bars had closed. He resided with an aunt in an apartment not far removed from his bar.

On July 30, 1963, during the late hours of the evening the appellant, one Anita Glover, at that time appellant's mistress,

and one Henry Bluford were together in the appellant's residence. Some person came to the door of appellant's apartment and advised him that his imployee, one Jesse H. Clagett, had been in charge of appellant's bar and had left the place with certain funds in his possession en route to a nearby liquor store for the purpose of replenishing the stock in trade.

Just outside of appellant's bar the said Clagett was set upon by a group of unknown persons, severely beaten and robbed.

Thereupon appellant, Anita Glover and Bluford drove to the appellant's bar where appellant and Anita Glover certainly entered the premises. The witness Bluford, testifying on the call of the Government, testified he also entered. Appellant and Anita Glover testified he did not. It is significant to note in this respect that the witness Bluford had testified he had been drinking on the day in question from the time he awakened until the time he left appellant's apartment. (Tr. 106). Anita Glover, having married the appellant prior to trial and having been advised of her right not to testify took the stand as a defense witness. Her testimony was substantially to the effect that when she left appellant's apartment with him she carried a brown paper bag within which she had placed a revolver. There is no testimony to show that appellant knew anything about that situation. She further testified that arriving at appellant's bar she saw the deceased sitting at a table; that she asked him if he had robbed and beaten Clagett; that he replied he had the money in question in his possession and proposed to keep it; and warned her to not bother him further; that appellant then

asked if deceased had beaten Jesse Clagett; that deceased repeated he had taken the money and would keep it; that he would cut appellant's throat if he did'nt cease to bother him; that thereupon the appellant shook the deceased by the shoulder and the latter arose and advanced toward appellant with a knife showing; that thereupon Anita Glover took the revolver from the bag; handed it to Glover; who shot the deceased. The appellant's testimony was practically to the same effect.

Regarding this scene the witness Bluford testified that he came into the bar after the entry of appellant and his wife; that the deceased was at a table, his forearms outstretched upon the table top, and his head upon his forearms; that appellant put his hand upon the deceased's shoulder and ordered him out of the place; that the deceased made no response nor any movement; that the appellant again shook the deceased; that the deceased slid from the chair and to the floor; that Anita Glover passed a gun to the appellant; that appellant shot the deceased in the head while he was lying upon the floor; that at no time did the deceased make any sound or movement except to fall to the floor. This witness further testified that a short time thereafter he rebuked the appellant for having shot the deceased and added that he had been of the original opinion appellant was trying to frighten the deceased "in fun" in order to get him out of the place.

Bluford was the only Government eye witness (Tr. 58), no other person testified that he saw the shooting.

Upon Cross examination the witness Bluford testified that

he was certain he was in the bar the day of the shooting because on that day he and the appellant had gone together to the Cherner Motor Co., in Virginia to purchase an automobile; that Bluford had been an automobile mechanic and that his opinion was valued by appellant. Proceeding with the cross examination the appellant for identification offered documents showing the date upon which the automobile was purchased. There was objection upon the ground the date of the purchase of the automobile was of no consequence. The appellant contended the proposed cross examination was proper in that it would adversly affect the credibility of the witness Bluford; however, the Court held that the date of the purchase of the automobile was a matter respecting which the defendant could not inquire or the Jury consider.

Thereafter, the Government called one Orian L. Curtis, a plain-clothes detective then working out of the 13th Precinct. This witness testified substantially as follows:

That on July 31, 1963, he transported the appellant from the 13th Precinct to the Homicide Squad Office; that en route he had a conversation with appellant and that appellant told him a gun, then in the possession of Officer Curtis, had been given to him by an unidentified colored man, and that he used this gun in the commission of the homicide. Thereupon, on cross examination the witness stated that prior to the ride from the 13th precinct to the office of the Homicide Squad the appellant and Charles Schaeffer, Esq., Counsel for the defendant, came to the 13th Precinct; that appellant surrendered himself

and that in the presence of Officer Curtis appellant was advised by his counsel to make no statements concerning the adventure unless he was present. On redirect Officer Curtis stated that he had not forced any statement from the appellant.

STATEMENT OF POINTS

It was prejudicial error to deny appellant the right to cross examine the witness Bluford respecting the purchase of the automobile in question.

SUMMARY OF ARGUMENT

The date of the pruchase of the automobile as an isolated fact was not connected with the commission of the homicide. The statement of the witness Bluford wherein he predicated his recollection of being in appellant's bar at the time of the homicide, upon the proposition that it was upon the same day he had gone with appellant to purchase an automobile is a factor directly bearing upon his credibility.

The appellant and his wife each testified that the witness Bluford was not in the bar at the time of the alleaed homicide. No other witness called by the Government testified that Bluford was at that time in the establishment. Appellant contends that had he been permitted to develop this matter it would have sharply focused the attention of the jury upon the fact that the witness Bluford could not possibly have been with appellant on the date of the purchase of the automobile in a bar where an alleged homicide occurred. Thus it would be apparent to the jury that either through the medium of false testimony or through an acute failure of testimonial recollection it would be difficult to predicate a conviction upon his testimony. The appellant would have been entitled to an instruction to the effect that the doctrine of falsus in unum, falsus in omnibus applied; and his counsel would have been permitted to

argue that proposition to the jury.

As a part of due process of law the appellant had an absolute right in the Court below to so proceed and by denying him the opportunity to exercise this right the Trial Court abrogated all of his constitutional rights to a fair trial under due process of law.

ARGUMENT

IT WAS PREJUDICIAL ERROR TO DENY APPELLANT THE RIGHT TO CROSS EXAMINE THE WITNESS BLUFORD RESPECTING HIS ASSERTIONS THAT THE ALLEGED HOMICIDE AND THE ALLEGED PURCHASE OF THE AUTOMOBILE OCCURRED ON THE SAME DATE

At Transcript, Volume 1, p. 120 counsel for appellant propounds the following question:

> Q. Mr. Bluford, on July 30, 1963, where did you and Mr. Glover go before you went to the club? In the daytime, early in the daytime where did you go together?
>
> (Tr.121) A. Well, he and Anita and myself, that was his intended wife and myself, we three, we just rode around trying the car out; and Earl said he was getting sleepy so he said we will go over the house for a while, so I said I am goint to stop here and get me a bottle.
>
> Q. What kind of car was that?
>
> A. A Ford. I don't remember what model it were.
>
> I think it was around '61 or '62.
>
> Q. Had you ever been in that car before —
>
> A. No, sir.
>
> Q. —Tuesday July 30?
>
> A. No, sir.
>
> Q. Did you say that you went with Earl Glover on July 30 and helped him buy this car?
>
> A. Yes, Sir.

Q. Where did you go to buy that car?

A. Churner Motor Company.

Q. In Virginia?

A. No, sir.

Q. In Washington?

A. Yes, sir.

* * *

(Tr. 122) Q. Mr. Bluford, isn't it a fact that Mr. Glover purchased this car about two weeks before Tuesday the 30th of July?

A. Well, the first day he bought it I wouldn't say the exact date, but on the day he bought the car I was the first one to run it after he had made the sale and everything.

Q. Let me ask you this. Is this a fact: you are not sure whether he bought the car on that day or some day before that day?

A. He bought it the day I was with him.

Q. I know you were with him, but was that Tuesday the 30th of July or could it possibly be some other day?

A. Well, it could be some other day, but as close as I can come to it, the day he got the car and the papers and everything was made up, he made a deposit down on it. I never seen the car before in my life that I know of. But he asked me to go up there and help him pick it out because he said after you have been a mechanic so long you should know an automobile when you see it.

In Collazo v United States, 196 F 2d 573, 90 U.S. App. D.C. 241, 252, 253, this Court speaks as follows relative to the right to cross examination:

> (12,13) The right of cross-examination is a fundamental one in our jurisprudence, and it may not be improperly restricted. But there are limits to the right, and a trial court has undoubted power to restrict it to proper bounds. Particularly is it true that there are bounds to cross examination designed for impeachment

> of general credibility rather than for development of a contradiction upon a point in issue. * * * Impeachment by contradicting a statement of fact made by a witness to a jury is one thing, and impeachment by showing that the witness spoke falsely upon another occasion, not in the presence of the jury and not concerning a fact before the jury, is something else. In the former instance the accuracy of the testimony itself is involved; in the latter the impeachment is by way of the character of the witness or his general qualifications as a witness.

It cannot be disputed the statement in question here is one made in the presence of the jury; concerning a fact before the jury -- i. e., his basic reason for asserting that he was in the company of appellant, at the latter's bar, on the date of the alleged homicide. That the witness drove appellant to the scene of the alleged homicide in the latter's car, bought that day.

At (Tr.213) on direct examination, counsel for defendant propounds the following question to the defense witness Anita Glover:

> Q. Mrs. Glover, I show you a piece of paper here marked for identification Defendant's No. 2-A and ask you to look at that paper. Have you seen that paper before?
>
> A. Yes.
>
> Q. And what is it?
>
> A. It's a receipt for my car.

At (tr. 214) this witness identifies documents identified as 2-B, 2-C, and 2-D, as papers relating to the purchase of a '61 Ford.

Thereupon the defendant offered to intorduce the documents into evidence and the following transpired - (Tr. 215)

Mr. Perry: I will object to them, your Honor.

THE COURT: Let me see them.
I am inclined to sustain the objection because I do not see that they are relevant to any issue in the case. However, I will hear counsel if counsel wishes to explain why he considers them relevant. You may come to the bench for that purpose.
(AT THE BENCH:)
THE COURT: All this shows is that she owned a car. How is that relevant?

MR. McKENZIE: Your Honor,the testimony of the witness Bluford stated that they went from 11th Street to the club in an automobile, a Ford bought the very day of the shooting. That is part of the testimony.

THE COURT: Did he say the automobile was bought the same day?

MR PERRY: I believe so, Your Honor.

MR. McKENZIE: This is the same automobile and it was bought on the 12th of July by this person, and I wanted that in there to tend to destroy the credibility of his evidence. * * *.

(Tr. 216) THE COURT: Did he say that on direct or on cross examination?
MR. PERRY: Cross-examination.

THE COURT: Well, then you are bound by his answer. The question as to whether testimony is collateral or not depends on whether it is on cross or direct.
I am going to sustain the objection. I think it is immaterial when the car was purchased.

In Wigmore on Evidence, Third Edition, Vol.III, p.669

§1005 (g) Recollection, the author says:

When the memory is tested by asking for the witness' recollection of facts not otherwise material, his errors of recollection cannot be shown by extrinsic testimony (ante,985). But circumstances which form the alleged grounds of his recollection of material facts testified to by him should be subject to contradiction, for the same reason as in the preceding topic.

The preceding topic is same 1005 (f), as follows:

(f) Opportunity of observing the events. A necessary qualification in a witness is personal knowledge, i.e., an opportunity, as to place, time proximity, and the like, to observe the event or

> act in question (ante 650), and the deficiency of such opportunity may be shown to discredit (ante 994). Hence, all facts which bear upon the position, distance, and surroundings, the bystanders and their conduct, the time and the place, the things attracting his attention, and similar circumstances, said by the witness to have been observed by him, are material to his credit in so far as they purport to have formed a part of the whole scene to his observation; thus, if error is demonstrated in one of the parts observed, the inference (more or less strong) is that his observation was erroneous (or his narration manufactured) on other and more important parts also.
>
> This source of discredit is of vast importance in the overthrow of false or careless testimony; and its permission must be provided for in any definition of the term "collateral"; * * *.

At Tr. 241, Glover testifying in his own behalf, and on direct examination, testified as follows respecting the date of the alleged homicide:

> Q. On that day did you and Anita and Mr. Bluford go to the Churner Motor Co?
> A. No, we did not on that day.
> * * *
> Q. When you purchased that car was Mr. Bluford with you?
> A. Yes, he was.
> Q. And what day was that?
> MR. PERRY: Your Honor, he is just going into something that you excluded.
> THE COURT: Objection sustained. When that car was purchased is immaterial.

From this it will appear that the Court had determined, as matter of law, that no evidence or testimony could be presented to the jury which tended to destroy the credibility of the only witness against the appellant.

The record demonstrates that the appellant and his wife testified to shooting in self defense; done at a time and place when the witness Bluford was not present.

The witness Bluford testified that the shooting was a

cold blooded deliberate attack upon a helpless person.

In this situation it was desperately necessary that the jury have full intelligence respecting the credibility of the witness Bluford. The testimony excluded bore directly upon his powers of testimonial observation; upon his power of testimonial recollection; upon his possible testimonial corruption, meaning not a generally debased character, but a disposition to testify falsely in the instant matter.

Where there is such a sharp and violent contradiction it is difficult to ascribe the result to mere mistake. The possibility of deliberate falsehood exists; and the jury should not be deprived of every available bit of evidence which bears upon the truth or falsity of the testimony adduced.

There is no rule of law which automatically prescribes the use of evidence which may be to some extent collateral.

In Edgarton v Welch Co._____Mass._____, 174 ALR 462, 468, 74 N.E. 2d 674, it was said:

> [3] The mere fact that a collateral issue may be raised is not of itself enough to justify the exclusion of evidence which bears upon the issue on trial. Bemis v Temple, 162 Mass 342, 344, 38 N.E. 970, 971, 26 LRA 254.

Here the entire warp and woof of the testimony had to do with the acquisition and operation of the automobile. It was in the automobile that Bluford said he went to the scene of the alleged homicide; it was in the automobile that he and appellant and Anita Glover had spent the greater part of the day driving about the City; it was the Automobile that he and appellant and Anita Glover went early in the morning to purchase.

In Alford v UnitedStates, 282 US 687, 75 L ed 625, 629, the Court stated:

> The trial court cut off in limine all inquiries on a subject with respect to which the defense was entitled to a reasonable cross examination. This was an abuse of discretion and prejudicial error.

CONCLUSION

In the face of the evidence and testimony which was before the Court it would appear that the trial court's ruling in denying appellant a right to cross examine the sole eye witness, fully and exhaustibly respecting the issue of credibility was error which requires reversal of the judgment below.

T. Emmett McKenzie
The Century Building,
412 Fifth Street, N.W.,
Washington, D. C. 20001

Counsel for appellant.

December 1, 1964.

BRIEF FOR APPELLEE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,949

EARL GLOVER, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

Appeal from the United States District Court for the District of Columbia

DAVID C. ACHESON,
United States Attorney.

FRANK Q. NEBEKER,
ROBERT X. PERRY,
DANIEL J. MCTAGUE,
Assistant United States Attorneys.

QUESTION PRESENTED

Where a Government witness had testified that the offense occurred on the date on which appellant had purchased a certain automobile and later admitted that he was not sure the car had been purchased on that date, was it improper for the trial judge to preclude appellant from introducing evidence tending to show that the automobile had been purchased on a day prior to the offense?

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,949

EARL GLOVER, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

Appeal from the United States District Court for the District of Columbia

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BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

An indictment filed in the District Court on September 3, 1963, charged appellant with first degree murder. On May 27, 1964, a jury found appellant guilty of second degree murder. He was sentenced to imprisonment for a period of 15 years to life on June 25, 1964. A notice of appeal was timely filed. On September 17, 1964, the District Court granted ap-

pellant's application to proceed on appeal without prepayment of costs. The sole question raised on appeal is the propriety of the trial judge's exclusion of evidence proffered by appellant to show that he had bought a certain automobile about two weeks prior to the homicide.

Appellant lived at 2126 11th Street, N.W. The witness Anita Glover apparently had lived with appellant at this address for some time prior to the homicide. She and appellant married each other some time between the date of the offense and the date of trial. Appellant rented the second story of the premises 2028 14th Street, N.W., which is located at the corner of 14th and V Streets, N.W. Appellant operated the premises as an "after hours club." Among his employees in this operation were the witnesses Jesse H. Clagett, Joseph Griffin (also known as "Sykes") and Patrick H. Johnson. It appears that appellant spent a good deal of time away from the club and that Joseph "Sykes" Griffin managed it for him. It also appears that when the club was running low on whiskey, one of the employees would take some money from the till and go to appellant's residence on 11th Street, where he apparently kept a supply for use at the club.

All of the above, as well as a large number of other circumstances preceeding and following the homicide were testified to in substantially the same manner by both Government and defense witnesses. Around midnight of July 30, 1963, the club was running short of liquor. Jesse Claggett took $12.90 and started for appellant's residence to

get some liquor. He had no sooner reached the street when five or six young men ("Jitterbugs, to me") jumped him, knocked him out and took the money (Tr. 24-30). Joe Griffin, Bernard Reed and Helen Claggett (Jesse's wife) then went to appellant's residence. Because of the heat appellant had stripped to his shorts and was lying in bed or sitting on the bed with Anita. Henry Bluford was lying on a couch in the front room. Prior to this time Bluford, appellant and Anita had been riding around in a car which appellant had purchased either on this day or about two weeks earlier. Bluford had done the driving since neither appellant nor Anita had a valid driver's license. Appellant was informed of Jesse Claggett's mishap. He gave Joe Griffin some liquor and Griffin and his companions started back to the club. Appellant dressed and Bluford drove him and Anita to the club. Anita carried with her a brown bag which contained a gun. (Tr. 64-72, 74, 79-87, 126-132, 200-207, 238-243.)

At this point there is a crucial divergence between the testimony of Bluford and that of appellant and his wife. Bluford stated that he parked the car and "throwed them the keys." Appellant and Anita went up the stairs to the club and Bluford followed immediately behind them. They went into the club and "there was a guy there laying on the table." Bluford demonstrated the man's position by putting his forehead down on his forearm.

Bluford testified that appellant told the man to get out of his house. The man did not move. Appellant pushed him on the shoulder and he still didn't

move. He pushed or grabbed the man by the shoulder and the man fell off the chair. He lay on his left side, "curled up" as though he were still sitting on a chair. Anita was standing over the man. Appellant took the bag from Anita and drew a gun from it. (Tr. 85-90.) Bluford said:

> So he shot, bam. So I told him, I said, Earl, you ought to be ashamed of yourself playing—
>
> * * * *
>
> I thought he was shooting to scare the man out of his house or something like that. But when I seen blood coming out from the man's head I just said, Oh, let me get out of here. So he [appellant] takes the gun and hands it back to Anita. He walks down the steps. When he went down I was right down behind him. So Anita, she come out behind. [Tr. 90-91.]

Bluford stated that at this time Jesse Claggett was sitting on a bench. His face was "messed up." He "didn't open his mouth." Bluford also said that at this time Joe Griffin was doing something in a closet, that when the shot was fired he turned his head and that was the first time Bluford saw him. (Tr. 95.)

Appellant testified that when he and Anita and Bluford left his residence on the night in question they were just going to ride around. He was going to stop by the club to see how things were going and whether anything was needed there. When they arrived at 14th and V Streets there were no parking places so Bluford double-parked and let appellant and Anita out of the car. Bluford stayed in the car and appellant and Anita went into the club. He did not

see Bluford again that night. When they arrived in the club Jesse Claggett told appellant that some "jitterbugs" had beaten him up and robbed him and that the soon-to-be-deceased (McCray) was one of them. Anita then asked the man for the money. The man said he had the money but he would not give it to Anita. Appellant then asked for the money. The man said he had the money. He told appellant to "get out of his face" or he would cut appellant's "raggedy throat." He then started for appellant with a knife. Anita handed appellant the gun and appellant shot the man as he was approaching him. He then became afraid and went next door to his aunt's house where he put the gun in a suitcase in which he kept some personal effects. When he came out again Joe Griffin said to him "Man, you shot that man." Appellant told Anita that they would go and see if the man was hurt. Appellant said that the man was not asleep and that his head was not down on the table. (Tr. 243-249.)

Anita Glover's testimony was substantially the same as that of her husband. (Tr. 206-209.)

Joseph Griffin testified that he managed the after hours club for appellant. On the night in question he had gone to appellant's residence, received some bottles of whiskey and returned to the club. While he was putting the bottles on a shelf in a closet, he heard the gunshot. He did not pay much attention to it because there were lots of people around and they were always shooting off "cherry bombs." He finished putting the bottles on the shelf and locked the closet.

He thought the man lying on the floor was drunk until he saw blood coming out of a hole in the man's head. After that "he just kept running." He went downstairs to the street. There he saw appellant. He told appellant that he [appellant] had just shot a man. He denied that he had seen appellant inside the club that evening. (Tr. 126-139.)

Jesse Claggett testified that he was an employee of appellant's and that on the evening in question he had been beaten and robbed. He denied that he told appellant that McCray was one of the men who robbed him. He said that he and McCray had consumed a considerable amount of alcohol before the homicide. He said that when appellant arrived at the club he saw him shaking McCray in an apparent attempt to wake him. McCray's head was down on the table. Claggett went to the wash room to clean his face. While there he heard a shot. When he returned to the room he saw McCray on the floor and appellant standing over him with a gun. (Tr. 24-41.)

STATUTES INVOLVED

Title 22, District of Columbia Code, Section 2401, provides in pertinent part:

> Whoever, being of sound memory and discretion, kills another purposely, either of deliberate and premeditated malice or by means of poison, or in perpetrating or attempting to perpetrate any offense punishable by imprisonment in the penitentiary . . . is guilty of murder in the first degree.

Title 22, District of Columbia Code, Section 2403, provides:

> Whoever with malice aforethought, except as provided in sections 22-2401, 22-2402, kills another, is guilty of murder in the second degree.

SUMMARY OF ARGUMENT

Appellant, his wife and the witness Bluford testified that on the afternoon prior to the homicide Bluford had driven the other two around in appellant's car. Bluford said that appellant had purchased this car earlier on the same day. On cross-examination he admitted that he was not sure the purchase had taken place on the same day as the homicide. Further cross-examination on this point was not restricted by the trial judge. Later in the trial appellant tried to prove that the purchase had occurred some time earlier than this date. Since the witness' recollection of the circumstances of the homicide was not dependent on any connection with the purchase of the car, the matter was collateral to the issues at trial and the trial judge properly refused to allow appellant to introduce evidence to show that the purchase was made on some other day.

ARGUMENT

I. Appellant's cross-examination of the witness Bluford was not limited by the trial judge, much less improperly limited; the trial court properly excluded appellant's evidence proffered to show the date of purchase of appellant's automobile.

(See Tr. 9, 13-14, 18, 24-25, 28-32, 34-35, 38-41, 44-45, 64, 67-72, 74-139, 200-249, 252-265)

Appellant gives the following caption to his sole argument made on appeal: "It was prejudicial error to deny appellant the right to cross examine the witness Bluford respecting his assertions that the alleged homicide and the alleged purchase of the automobile occurred on the same date." The witness had testified that on the afternoon prior to the homicide he had gone with appellant to the Cherner Motor Company, that appellant had bought a car there and that the witness had then driven appellant and Anita around in the car. On cross-examination he was asked, "I know you were with him, but was that Tuesday the 30th of July or could it possibly be some other day?" The witness replied: "Well, *it could be some other day*, but as close as I can come to it, the day he got the car and the papers and everything was made up, he made a deposit down on it." [Emphasis added.] Appellant's cross-examination of appellant on this point was not limited. Indeed the Court overruled the two objections made by the prosecutor during the remainder of appellant's cross-examination of the witness. (Tr. 122-125.)

Appellant complains that he was not allowed to show that the purchase of appellant's automobile was

made on a date about two weeks prior to the offense and not on the date of the offense. He claims he had a right to do this in order to impeach the credibility of the witness Bluford. The trial judge properly refused to allow appellant to offer this evidence.

Appellant claims that the witness Bluford "predicated his recollection of being in appellant's bar at the time of the homicide upon the proposition that it was upon the same day he had gone with appellant to purchase an automobile . . . ." (Appellant's brief at p. 6.) Were this true, we would have another case. The fact is that nowhere in his testimony did Bluford say he remembered the events in appellant's bar *because* they happened on the same day as the purchase of the automobile. He admitted that the purchase of the automobile and the homicide could have occurred on different days. Thus it was irrelevant whether the two events happened on the same day or on different days and appellant's evidence proffered to show that they had happened on different days was properly excluded.

CONCLUSION

Wherefore, it is respectfully submitted that the judgment of the District Court should be affirmed.

DAVID C. ACHESON,
United States Attorney.

FRANK Q. NEBEKER,
ROBERT X. PERRY,
DANIEL J. MCTAGUE,
Assistant United States Attorneys.

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